



Public Notice

U.S. Army Corps Of Engineers Galveston District	Permit Application No: _____	23282
	Date Issued: _____	30 April 2004
	Comments Due: _____	1 June 2004

**U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

PURPOSE OF PUBLIC NOTICE: To inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

AUTHORITY: This application will be reviewed pursuant to Section 404 of the Clean Water Act.

APPLICANT: Kahala Development, LLC
3312 Thousand Oaks Cove
Austin, Texas 78746-7473

AGENT: SWCA Environmental Consultants
4888 Langfield Road, Suite 300
Houston, Texas 77040-6663
Telephone: 713-934-9900
POC: Brian Fairchild

LOCATION: The project is located adjacent to the Gulf of Mexico in coastal dune swale freshwater wetlands, between 8 Mile Road and Beach Pocket Park Number 2 in Galveston, Galveston County, Texas. The project and mitigation sites can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 27 for the **project site** are: Zone 15; Easting: 316507; Northing: 3235193; **mitigation site**: Zone 15; Easting: 315867; Northing: 3235325.

PROJECT DESCRIPTION: The applicant proposes to place 43,500 cubic yards of clean fill into approximately 21.53 acres of the approximately 24.12 acres of adjacent jurisdictional freshwater wetlands existing on site for the purpose of constructing residential housing lots. The fill material will be obtained onsite and/or from native sources near the site (north and adjacent to FM 3005). The fill will be obtained from upland areas. The project site consists of Phase1 and Phase 2.

A wetland delineation has been submitted and verified by the Corps of Engineers for Phase 1 of the project (D-14079(03)). Currently, construction is ongoing in the uplands of Phase 1 of the project site. Total verified adjacent freshwater wetland acreage for Phase 1 is 6.978 acres. Under this permit application, the applicant proposes to fill 5.274 acres and avoid 1.704 acres in Phase 1. Currently, the avoided freshwater wetlands are being protected via silt fence and other appropriate sediment controls. However, even though the applicant has avoided the wetlands, the quality of the avoided wetlands has deteriorated significantly due to the surrounding residential infrastructure being constructed around the wetlands.

A wetland delineation has not been submitted for Phase 2 of the project. Phase 2 of the project proposes to impact approximately 16.256 acres of the total 17.144 acres of wetlands existing onsite. The applicant proposes to avoid approximately 0.888 acres of wetlands in Phase 2.

As mitigation the applicant proposes one of three possible plans. The proposed site is located on a 53 acre tract north of FM 3005 and south of Stewart Road. The proposed mitigation site appears to contain a mixture of upland, grassland and palustrine emergent wetland based on aerial photos. Approximately 11.5 acres of wetlands currently exist on the tract although exact wetland boundaries still need to be delineated on the site. The applicant has proposed three different concepts for comment. Concept Plan 1 would result in the creation of 24 acres of freshwater wetlands; Concept Plan 2 would result in the creation of 25-30 acres of freshwater wetlands, and Concept 3 would result in the creation of approximately 25 acres of freshwater wetlands. All concepts would include a grassland fringe and uplands. The applicant's plans are enclosed in 17 sheets.

NOTES: This public notice is being issued based on information furnished by the applicant. This information has not been verified.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the Clean Water Act (CWA).

OTHER AGENCY AUTHORIZATIONS: Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program.

STATE WATER QUALITY CERTIFICATION: This project would result in a direct impact of greater than three acres of waters of the state or 1500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with U.S. Army Corps of Engineers (Corps) processing of this application, the TCEQ is reviewing this application under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the Corps and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of work is made available for review in the TCEQ's Austin office. The complete application may be reviewed in the Corps office. The TCEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the application, if granted, would adversely affect such interest.

NATIONAL REGISTER OF HISTORIC PLACES: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties:

The permit area is likely to yield resources eligible for inclusion in the National Register of Historic Places. An investigation for the presence of potentially eligible historic properties is justified.

THREATENED AND ENDANGERED SPECIES: Preliminary indications are that no known threatened and/or endangered species or their critical habitat will be affected by the proposed work.

ESSENTIAL FISH HABITAT: This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or Federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-330, the Regulatory Programs of the Corps of Engineers, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps of Engineers may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues are substantial and should be considered in the permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before **1 June 2004**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections**. Comments and requests for additional information should be submitted to:

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Regulatory Branch, CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
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409-766-3804 Phone
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